Form No. J(2)C—38

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मामला क्रमांक Cri. App. 1144 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 1144/2002

APPELLANT		Bablu alias Shailendra Dogre, aged about 25 years, s/o Radhe Shyam Dogre, occupation student, R/o near Barle Kirana Dukan, Model Town, Bhilai, P.S. Supela, District Durg(CG)
	Versus	
RESPONDENT		State of Chhattisgarh

Cr. Appeal under Section 374(2) of the Code of Criminal Procedure

DB.: HON'BLE SHRI L.C. BHADOO, J. &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL ORDER
(24.08.2007

L.C. Bhadoo, J:

Shri Ravindra Agrawal, counsel for the appellant.

Shri D.K.Gwalre, Government Advocate for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 10.10.2002, passed by the Fourth Additional Sessions Judge, Durg in S.T.406/2001, after holding the accused/appellant guilty for commission of the offence punishable under Section 302 of I.P.C. for committing murder of

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आदेश पत्रक (पूर्वानुबद्ध)

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Dauwa alias Jaswant Singh, sentenced him to undergo imprisonment for life and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 3 months.

The case of the prosecution in brief is that the accused/appellant as well as the deceased Dauwa alias Jaswant Singh used to reside in Model Town, Indira Nagar, Bhilai, there was some quarrel between them. On the date of incident i.e. on 8.9.2000, at about 1.00 p.m., the witnesses Chandrashekhar (PW-7) and Nilkanth Yadav (PW-10) were removing the decorative lighting series from the deity of Lord Ganeshaji, the deceased came near them and he was talking to them. In the meantime, the accused/appellant Bablu alias Shailendra also came there. Altercation took place between the accused and the deceased. After hearing the commotion, Sonkunwar Bai (PW-2) went to the place of occurrence, she saw that the accused/appellant attacking Jaswant Singh with a knife, as a result of which, he fell down on the ground and accused/appellant ran away from the spot after attacking the deceased with knife,. Sonkunwar Bai informed Arjun Singh and his wife-Nandini Bai, who came on the place of occurrence and saw that Jaswant Singh was lying on the place in an injured condition. Thereafter, Arjun Singh and Chhiru @ Kashmira took Jaswant Singh in a Tempo to Sector-9 Hospital, Bhilai. He was admitted there. During the course of treatment, Jaswant Singh succumbed to the injuries, therefore,

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आदेश पत्रक (पूर्वानुबद्ध)

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the Doctor informed to Police Station-Supela. In the meanwhile, Rajeshwari also reached to the hospital and Sub-Inspector K.M.Mishra, reached to the hospital and registered Dehati Nalici under Ex. P/1 on the information given by Arjun Singh, based on that First Information Report under Ex.P/2 was registered. The Investigating Officer left for the scene of occurrence. After giving notice to the Panchas under Ex. P/10, he prepared inquest under Ex.P/11 on the body of Jaswant Singh. Halka Patwari, prepared Naksha Panchanama under Ex.P/3. The clothes of the deceased were seized under Ex.P/4. The blood stained soil and plain soil was seized under Ex.P/5 from the place of occurrence. The accused/appellant gave memorandum under Ex.P/6 while in the Police custody regarding the place, where he kept the knife, in pursuance of that, knife, the weapon of offence was seized under Ex. P/7. The clothes of the accused were seized under Ex.P/8. Panchnama regarding seizure of knife (Ex.P/9) was prepared. Injuries on the body of Jaswant Singh were examined by Dr. R.R.Borle, he prepared injury report under Ex.P/13. The body of Jaswant Singh was sent for postmortem examination, where, Dr. S.R.Churendra (PW-8) conducted postmortem on the body of Jaswant Singh and prepared postmortem report under Ex. P/16 and opined that the cause of death was shock and hemorrhage due to multiple stab injury and the death was homicidal in nature. The clothes of the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellant and the deceased, knife, other articles were sent to Forensic Science Laboratory, Raipur under Ex.P/20, from where, the F.S.L. report under Ex.P/21 and Serologist report under Ex. P/22 were received.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Durg, who in turn, committed the case to the Sessions Judge, from where, the learned Additional Sessions Judge, Durg received the case on transfer for trial.

The prosecution in order to establish the charge against the accused/appellant examined as many as 17 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime. Regarding seizure of the clothes, he pleaded innocence. He also denied that his shirt and baniyan were seized.

After hearing the counsel for respective parties, the learned Additional Sessions Judge, convicted and sentenced the accused/appellant as aforementioned.

We have heard Shri Ravindra Agrawal, learned counsel appearing on behalf of the accused/appellant and Shri D.K.Gwalre, learned Government Advocate, appearing on behalf of the State.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Shri Agrawal has not disputed the homicidal death of Jaswant Singh. Moreover, Dr. S.R.Churendra (PW-8) has stated that on 9.9.2000, he conducted postmortem on the body of Jaswant Singh, he noticed the following injuries on the body of the deceased:

1. Incised wound in the size of 6cm x 1 cm x upto bone deep on middle of scalp
2. Incised wound in the size of 4 cm x 1cm x upto bone deep on the left parietal region of scalp
3. Wound in the size of 2 ½ cm x 1 cm x 8 cm spindle shaped, 4 cm above and medial to right side of the chest.
4. Wound in the size of 2 ½ cm x 1 cm x 1 cm deep spindle shaped on the lower part of the chest right side in mammary line, 6 cm above right to umbhicys.
5. Wound in the size of 2 ½ cm x 1 cm x 3 ½ cm spindle shaped directions upward midially upto left clavicle, 4 cm above x left to left memmary
6. Wound in the size of 2 ½ cm x 1cm x 9 ½ cm, spindle shaped, everted margin, medially and backward punctured to muscle of chest and upper lobe of left lung 2 cm below the 6th wound.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. Wound in the size of 2 ½ cm x 1cm x 14 cm spindle shaped everted margin directing upward & medially punctured to chest muscle left upper lobe of lung.

He stated that the injuries were ante-mortem in nature, caused by pointed and sharp edged weapon. Injury Nos. 3, 6, 7 & 9 were grievous, the cause of death was excessive hemorrhage and on account of injuries. In view of the above evidence of the Doctor, it is established that the death of Jaswant Singh was homicidal in nature.

As far as the involvement of the accused/appellant in crime in question is concerned, all the eye-witnesses have turned hostile and they have not supported the case of prosecution. The case rests on the circumstantial evidence i.e. (i)'B' blood group was found on the clothes of the accused/appellant as well as the deceased. (ii)The knife in question, weapon of offence was recovered from the place of occurrence.

In order to rest the conviction based on the circumstantial evidence, as per the settled law laid down by the Apex Court in the matter of **Dhananjoy Chatterjee vs. State of W.B.**[1] the Apex Court held that:

[1] (1994) 2 SCC 220

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आदेश पत्रक (पूर्वानुबद्ध)

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"In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Now we shall proceed to scrutinize the evidence in respect of the circumstantial evidence:

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

As far as the blood group 'B' is concerned, as per the serologist report (Ex.P/22), human blood group was found on the full pant of the deceased-C, G- Baniyan and H- Shirt of the accused. But in this case, sealing of seized clothes and place of seizure of the clothes of the deceased is doubtful. There is no clear-cut evidence that the clothes seized, were sent in sealed condition to the F.S.L.

PW-1-Arjun Singh has stated that the Police seized the clothes of the deceased including one full pant under Ex.P/4. He has not stated that where the Police seized the clothes and whether they were in sealed condition. PW-6-Yashwant Singh has stated that nothing was seized by the Police in his presence, but Ex.P/4 & Ex.P/5 bears his signature. In para 6 of his evidence, he has stated that the Police obtained his signatures on the papers Ex.P/4 to P/9 in the Police Station. PW-13- Ashok Dhar Diwan, Constable No. 1049 of Police Station- Supela, Police Out Post-Smriti Nagar, has stated that on 8.9.2000, he was in the Police Out Post, he brought the clothes of the deceased namely-Jaswant Singh i.e. pant, shirt, baniyan from Sector-9 Hospital and on his production, the Chowki Incharge seized the clothes under Ex.P/4. He has stated that the Doctor gave him the clothes, he brought those clothes, tied with a bandage, he does not know how the clothes were and what was the colour of the clothes. He took the clothes in the same

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

condition in the Police Station, whereas, the Investigation Officer PW-16- K.M.Mishra has stated that on 8.9.2000, in the hospital he seized the clothes of the deceased.

A perusal of the seizure memo would show that the clothes were seized from Ashok Dhar Diwan –PW-13 and they were sealed in the Police Station, whereas, in the column of place, hospital has been mentioned. Ashok Dhar Diwan has stated that the clothes were given to him by the Doctor and he took the clothes to the Police Station, therefore, the evidence regarding the place of seizure of the clothes and sealing them at the time of seizure is doubtful because the evidence of the Police Constable and the Investigating Officer is contradictory to each other. In the seizure memo (Ex.P/4), it has been mentioned that the clothes were handed over by Ashok Dhar Diwan, therefore, his evidence has to be believed as he took the clothes to the Police Station, therefore, the seizure of the clothes in the hospital has not been established and that has become doubtful and therefore, on this evidence that the blood on the clothes of the deceased was of 'B' blood group, becomes doubtful, as the recovery of the clothes of the deceased sending them in sealed condition to F.S.L. becomes doubtful and based on these circumstances, the accused/appellant cannot be connected with the crime in question.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

As far as the recovery of the knife is concerned, in the first instance as per the F.S.L. report and Serologist report, there is no report that any human blood was found on the knife. It has been stated that the same was disintegrated. Nor the knife has been examined by the Doctor in order to establish that the injuries in question, which were found on the body of Jaswant Singh were inflicted by the knife in question, therefore, on the basis of the recovery of knife, the accused/appellant cannot be connected with the crime in question. There is no other circumstantial evidence to connect the accused/appellant with the crime in question, therefore, the conviction and sentence imposed against the accused/appellant under Section 302 of I.P.C., cannot be sustained.

In the result, the appeal succeeds. The conviction and sentence imposed upon the accused/appellant under Section 302 of I.P.C. are set aside and he is acquitted of the charge. It is stated that the accused/appellant is in detention since the year 2000, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

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